



UNITED NATIONS



THIRD CONFERENCE ON THE LAW OF THE SEA

PROVISIONAL

For participants only

A/CONF.62/C.2/SR.24
6 August 1974

ORIGINAL: ENGLISH

Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE TWENTY-FOURTH MEETING

Held at the Parque Central, Caracas,
on Thursday, 1 August 1974, at 3.15 p.m.

Chairman:

Mr. AGUILAR

Venezuela

later:

Mr. PISK

Czechoslovakia

Rapporteur:

Mr. NANDAN

Fiji

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Consideration of subjects and issues and related items: exclusive economic zone beyond the territorial sea (continued)

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AS THIS RECORD WAS DISTRIBUTED ON 6 AUGUST 1974, THE TIME-LIMIT FOR CORRECTIONS WILL BE 13 AUGUST 1974.

The co-operation of participants in strictly observing this time-limit would be greatly appreciated.

CONSIDERATION OF SUBJECTS AND ISSUES AND RELATED ITEMS: EXCLUSIVE ECONOMIC ZONE BEYOND THE TERRITORIAL SEA (A/9021; A/CONF.62/L.4; A/CONF.62/C.2/L.17, L.18, L.21, L.22 AND L.23) (continued)

Mr. LING (China) observed that the Asian, African and Latin American peoples had long suffered from aggression and plunder at the hands of the colonialists and imperialists and, accordingly, their determination to see a territorial sea established together with an exclusive economic zone up to 200 nautical miles was entirely proper and reasonable. Their position, which reflected an irreversible trend of the times, had won widespread support; even the two super-Powers had come to recognize the concept of the economic zone.

On the question whether the coastal State should exercise full sovereignty over the renewable and non-renewable resources in its economic zone or merely have preferential rights to them, he said that such resources in the off-shore sea areas of a coastal State were an integral part of its natural resources. The super-Powers had for years wantonly plundered the off-shore resources of developing coastal States, thereby seriously damaging their interests. Declaration of permanent sovereignty over such resources was a legitimate right, which should be respected by other countries. The super-Powers, however, while giving verbal recognition to the economic zone, were advocating the placing of restrictions on the sovereignty of coastal States over their resources. For example, one of them had proposed that the coastal State should allow foreign fishermen the right to fish within that zone in cases where the State did not harvest 100 per cent of the allowable catch. Such logic made no sense. The suggestion in fact harked back to that super-Power's well-known proposal that coastal States should be allowed only "preferential rights" when fishing their own off-shore areas. Yet, the establishment of exclusive economic zones over the resources of which coastal States would exercise permanent sovereignty simply meant that the developing countries were regaining their long-lost rights and in no way implied a sacrifice on the part of the super-Powers. The coastal State should be permitted to decide whether foreign fishermen were allowed to fish in the areas under its jurisdiction by virtue of bilateral or regional agreements, but it should not be obliged to grant other States any such rights.

The land-locked countries should enjoy reasonable rights to and benefits from the resources in the economic zones of their respective neighbouring coastal States. Specific arrangements could be made by means of full consultations between coastal and

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land-locked countries. Appropriate regional arrangements should also be made by States which had at heart the interests of geographically disadvantaged countries. Any attempt to make use of that question to poison the relations between coastal and other States would be futile.

With regard to the question whether a coastal State should exercise exclusive or restricted jurisdiction over the economic zone, he said that exclusive jurisdiction was the natural corollary to the exercise of full sovereignty over resources. If the coastal State did not have the right to protect, use, explore and exploit all the natural resources in the zone, to adopt the necessary measures to prevent those resources from being plundered, encroached on, damaged or polluted, and to exercise over-all control of the marine environment and scientific research and regulate them, there was no point in speaking about full sovereignty over resources. Freedom of navigation for foreign vessels and other legitimate rights and interests of foreign States should be given reasonable guarantees on the understanding that the relevant laws and regulations of the coastal State would be respected.

However, neither of the super-Powers recognized the exclusive jurisdiction of the coastal State over the zone; both proposed instead that coastal State jurisdiction should be subject to "international standards" and that it should comply with "internationally agreed rules". One super-Power had even gone so far as to suggest that the coastal State should not be permitted to regulate scientific research or adopt measures to prevent pollution from ships in the economic zone.

To place restrictions on coastal State sovereignty over the resources of the economic zone or on coastal State jurisdiction was to deny the "exclusive" nature of that zone and was absolutely impermissible. His delegation therefore supported the proposals put forward by a number of the developing countries of Asia, Africa and Latin America, including the draft articles recently submitted by Nigeria (A/CONF.62/C.2/L.21), which not only safeguarded the coastal State's sovereignty over the resources and its jurisdiction over the zone, but also took into account the navigation and other legitimate interests of foreign States.

His delegation was firmly opposed to any attempts to bargain over a solution to the question of the exclusive economic zone. For instance, it could not accept the suggestion that free passage of warships through straits lying within the

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limits of the territorial sea must be recognized before the establishment of economic zones could be accepted; that idea was nothing less than blackmail. In short, no attempt "to make a deal" at the expense of the sovereignty of other States could be tolerated.

Mr. GALINDO POHL (El Salvador) said that his delegation recognized the importance for the Conference of the nine-Power draft (A/CONF.62/L.4), which constituted a serious attempt at a compromise between conflicting positions. His delegation therefore hoped that it would not be possible to pass from a phase in which each country uncompromisingly defended its position to the stage of "pre-negotiation", and his comments would therefore be directed at initiating a dialogue.

The nine-Power working paper (A/CONF.62/L.4) was based on the principle of interdependence between the régimes over areas under national jurisdiction and implied that such interdependence must be taken into consideration during the negotiations and in the subsequent drafting of the future convention. Thus, the traditional territorial sea of 12 miles depended upon an economic zone of up to 200 miles, and vice versa.

The economic zone - a concept crucial to the general agreement - must be defined in unambiguous terms. Document A/CONF.62/L.4 did not go far enough in the sense that it did not make a sufficiently sharp distinction between an economic zone and a zone in which preferential rights were exercised. For example, article 7, paragraph 1, rightly stipulated that the waters enclosed by the baseline "belong to and are subject to the sovereignty of the archipelagic State to which they appertain"; but article 10, under the heading "Economic zone", merely spoke of "sovereign rights", without any mention of residual rights or other economic uses of the sea. It would be preferable to draft those articles along the same lines, granting the same kind of powers to States over both types of zones, omitting the term "sovereignty" in the case of archipelagic States, and referring to sovereignty for the purpose of exploring and exploiting the natural resources in the case of the economic zone. The term "sovereign rights" in respect of the natural resources of the economic zone reflected the compromise solution adopted at the 1958 Conference concerning the nature of rights over the continental shelf, where the term "sovereign rights" had been preferred to the terms "sovereignty", "jurisdiction" and "exclusive rights". In view of the controversy that had then taken place, the Committee might wish to consider whether a legal

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definition of "sovereign rights" should be incorporated in the draft. To do so might, however, leave in doubt the question of residual powers and rights - a question which his delegation regarded as of crucial importance to the meaningful definition of an economic zone. The silence of the draft concerning such rights and powers could be interpreted as meaning that they were vested in the international community. If the international community maintained effective control, such an arrangement was not unacceptable; but it was well known that when rights were not specifically defined they would in fact be exercised not by the international community but by other States, and more likely than not, by the major maritime Powers.

In article 10, the reference to the exercise of rights "in and throughout" the exclusive economic zone might give rise to misunderstandings and should be replaced by the word "over" in order to preserve the spatial connotations of the zone. Accordingly, his delegation wished to suggest the following formula: "The coastal State exercises over an area beyond and adjacent to its traditional territorial sea, known as the 'exclusive economic zone': (a) sovereignty over the exploration and exploitation of the natural resources, whether renewable or non-renewable, of the sea-bed and subsoil and the superjacent waters".

The provisions concerning artificial islands and freedom of navigation were both compatible with the spatial connotations of the economic zone to which he had just referred. The same was true of the continental shelf but not of the superjacent waters in the economic zone, with the result that two different régimes might apply between the 12-mile and 200-mile limit. In his delegation's view there should be a uniform legal régime in respect of both the waters and the sea-bed within the zone.

His delegation believed that reference should be made to "other economic uses of the sea" in article 10 (b). It therefore proposed that that provision should be amended to read "(b) the other rights and duties ..., the conduct of scientific research and other economic uses of the waters". Furthermore, the definition of the economic zone should indicate where the high seas began, since that was a prerequisite for the future interpretation of agreed international rules, and must also incorporate a specific reference to the fact that all residual rights and powers would belong to the coastal State.

The language of article 15 should be recast to read: "The laying of submarine

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cables and pipelines shall be effected without interference with the rights exercised by the coastal State in that zone or with other legitimate uses of the sea."

The foregoing changes, if accepted, would bring the definition of the "exclusive economic zone" contained in the nine-Power working paper more closely into line with the concept of the zone as it was generally understood. The gap between the term and the reality it covered was at present too wide.

Mr. LAWSON (Togo) expressed his delegation's condolences to the Government of Bangladesh in connexion with the natural disaster which had struck its territory.

He said that his delegation attached the greatest importance to the concept of the economic zone - a concept which had been born in Africa and had then quickly gained the support of other countries of the third world. The success of the Conference undoubtedly rested upon its acceptance, and he was therefore pleased to note that there was almost unanimous agreement regarding its incorporation in the future convention.

For his delegation, the economic zone concept implied abandonment of the notions of the contiguous zone and the continental shelf, which had now become obsolete. The zone should be exactly 200 miles in breadth, measured from the applicable baselines. Its establishment did not preclude the delimitation of a territorial sea of 12 miles or more. In accordance with the Declaration of the Organization of African Unity (A/CONF.62/33), which Togo supported without any reservations, the coastal State would exercise permanent and exclusive sovereignty over all living and mineral resources in the economic zone. While the sovereignty of the coastal State over that zone should not be so absolute as in the case of the territorial sea, it was unthinkable that the resources should be exploited by another State without due authorization. The developing countries had seen their resources exploited by the colonialist and neo-colonialist Powers for too long; to weaken in their resolve and allow their basic rights to be diluted.

The land-locked countries should be granted free access to the sea in addition to their basic freedoms within the territorial sea and the economic zone. His Government was fully prepared to conclude bilateral and regional agreements with neighbouring land-locked countries so as to allow them to exploit the living resources of the economic zone provided that it exercised full sovereignty over the resources therein. He feared that, if the forthcoming convention were to provide otherwise - with the result that selfish third States exploited the resources of the zone - the land-locked countries would stand to suffer most.

Mr. VANDERPUYE (Ghana) said that his delegation stood by the position reflected in document A/AC.138/SC.II/L.40 and Corr.1-3 (A/9021, vol. III, p. 87), of which it was a sponsor. However, in order to bring the proposal into line with the recently revised Declaration of the Organization of African Unity (A/CONF.62/33), it wished to delete, in the second paragraph of article VIII, the words "the principle of".

Contrary to the statement by the representative of New Zealand that no attempt had so far been made to reflect in the various draft articles before the Conference the substance of section C, paragraph 10, of the Declaration of the Organization of African Unity, he would point out that article XI of document A/AC.138/SC.II/L.40 specifically provided that no State exercising foreign domination over a territory should be entitled to establish an economic zone with respect to such territory. None the less, his delegation was willing to concede that the text in section B of document A/CONF.62/C.2/L.30, sponsored by New Zealand and three other delegations, might strengthen the text of document A/AC.138/SC.II/L.40 and he would therefore commend it to the other 13 sponsors.

The draft articles submitted by the Nigerian delegation (A/CONF.62/C.2/L.21), although somewhat narrower in scope than the 14-Power proposal in document A/AC.138/SC.II/L.40, none the less contained some interesting innovations. In particular, the substance of article 2, paragraph 2, should be incorporated in the future convention, thereby enabling coastal States to enter into arrangements with external fishing enterprises for the exploitation of surplus fish stocks and avoiding the under-utilization of living resources. The convention might also provide for such enterprises to expedite the transfer of fishing technology to developing coastal States and, in particular, to disclose any scientific information regarding the location and type of fish stocks in the area.

In conclusion, he expressed the hope that the concept of the exclusive economic zone and its elder cousin, the patrimonial sea, could be brought even more closely into line with each other, thus making it possible for the Conference to adopt treaty articles at the current session.

Mr. THEODOROPOULOS (Greece) expressed his delegation's sympathy with the people of Bangladesh following the recent flood disaster in that country.

His delegation, having recently realized the importance for many countries of the concept of the economic zone, and having taken account of the strong feelings of regional groups, particularly in the Caribbean, would not exceed-
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exceeding 200 miles. /...

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(Mr. Theodoropoulos, Greece)

As a major seafaring nation, Greece was anxious to preserve freedom of navigation within that zone. In that connexion, he recalled the draft articles on enforcement (A/CONF.62/C.3/L.4) submitted by his delegation in the Third Committee, in which it tried to harmonize the requirements of coastal States with those of international shipping in the various jurisdictional zones, including the economic zone.

He wished also to introduce document A/CONF.62/C.2/L.32 submitted by his delegation, which dealt with two problems, namely the economic zone of islands and its delimitation. While he would reserve his comments on the former problem until the status of islands was examined, he wished to state at the current stage that, in his delegation's view, islands were as much a part of the territory of a State as its principal territory, and were therefore entitled to the same treatment under international law. As the representative of New Zealand had pointed out, they should not be penalized for being islands.

As to the problem of delimitation, his delegation's proposal was consistent with its proposals concerning the territorial sea and the continental shelf: failing bilateral agreement the rule of equidistance would apply. In that context, he wished to comment on the view expressed earlier to the effect that the notion of equidistance operated to the disadvantage of the smaller State. His delegation was inclined to conclude exactly the opposite: it was the small peaceful State that was protected by the acceptance of an objective rule such as equidistance, instead of having to negotiate on the basis of vague so-called "criteria" under economic, political or even military duress exerted by a more powerful but less peaceful neighbour. Furthermore, many other delegations had expressed persuasive views in favour of the rule of equidistance.

Mr. Pisk (Czechoslovakia), Vice-Chairman, took the Chair.

Mr. ANDERSEN (Iceland) emphasized that the very concept of the economic zone implied the sovereign rights of the coastal State over all the natural resources of the zone, as an integral part of the natural resources of the coastal State. The concept thus replaced the obsolete system of narrow fishery limits under which the coastal State had no rights over fishery resources beyond those limits except through agreement with other States.

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The view had been advanced that, within the economic zone, resources surplus to the requirements of the coastal State could be utilized by other States. Such a system would be reasonable and even practical, provided the decision lay with the coastal State. If, on the other hand, the decision was left to the other States concerned, or to some third-party settlement, the resulting situation would amount to maintaining the obsolete system in a new form. Instead of the coastal State having exclusive control over an area up to 12 miles wide, plus whatever other States might agree to, the coastal State would have control over an area 200 miles wide minus whatever other States or a third party might decide - even perhaps on the basis of so-called "traditional rights" in the area. That would amount to a change in form but not in substance, and was not in conformity with present-day realities. In fact the two forms of the concept would give similar results for the distant-water fishing countries, and that presumably was the intention. For the foregoing reasons, his delegation fully supported the concept of the exclusive economic zone.

Mr. SLADE (Western Samoa) stressed the vital importance of the exclusive economic zone to a developing coastal State such as Western Samoa. His delegation naturally supported that concept, and welcomed its wide acceptance.

Within that zone, the coastal State should have, firstly, full sovereignty to explore and exploit the living and non-living resources of the sea, the sea-bed and the subsoil thereof; and, secondly, full sovereignty over pollution control and scientific research.

As stated in plenary, his delegation advocated an exclusive fisheries jurisdiction within a wide economic zone, in particular because of the paramount importance of fisheries as the very livelihood of the people of his country. However, in the light of the concern expressed by several countries, his delegation could accept the idea of a fisheries régime that allowed for the rational management of fish stocks. Under such a régime, the coastal State could offer a percentage of the unutilized available catch to others on terms not unfavourable to it, and would have residual rights to control the fish stocks. It would be most desirable for the coastal State, particularly a developed one, to require the other State to sell, as a basic condition, a certain proportion of its catch to the local market.

The coastal State should also have the right to control marine and scientific research; but, in order to ensure that such research was not unduly restricted, the

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coastal State should not unreasonably withhold authorization. However, only pure scientific research should be authorized. Furthermore, all data collected should, within reason, be made available to the coastal State and, where practical, the training of local personnel should be ensured. On the other hand, no authorization should be given to research that might lead to exploitation of the resources of the coastal State.

Freedom of navigation and overflight, and the freedom to lay submarine cables and pipelines should be preserved, but such activities should not interfere with the exercise of the rights of the coastal State within the zone.

His delegation believed that the establishment of a broad economic zone of up to 200 miles was consistent with current legal and political trends, and was essential to the sovereign needs of developing coastal States such as Western Samoa, whose special interest in the resources of the sea must be accommodated on the basis of equality. Indeed, because of the unique isolation of his country, those interests should be given special consideration.

His delegation had noted with concern the suggestion to limit the ocean space entitlement of islands including their economic zone, on the basis of criteria of land area and population. Like other delegations from the South Pacific, his delegation assumed that such a suggestion had limited and special application and would find universal application of such a rule completely unacceptable. Not only would it ignore the special characteristics of oceanic islands; it would also deny to countries like Western Samoa full state sovereignty. As the representative of New Zealand had pointed out, such a rule would unfairly penalize island countries in the Pacific and would constitute a discriminatory act not envisaged in international law.

As one of the sponsors of document A/CONF.62/C.2/L.30, his delegation wished to draw attention to two provisions of that document. Firstly, article 3 in part A would insure that the economic zone of an island was determined in accordance with the provisions of the convention applicable to other land territory. That was a fundamental equitable principle. The second provision - that set forth in part B - was intended to ensure that the rights to the resources of the economic zone created in respect of territories under foreign domination or control were vested in the inhabitants of those territories to be exercised by them for their benefit and in accordance with their needs.

While his delegation had concentrated on the problems of an oceanic island State, it was not indifferent to the rights and interests of other countries, particularly those

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of land-locked and other geographically disadvantaged States, which must be guaranteed access to the living resources of neighbouring waters.

Mr. TUPOLI (Tonga) expressed his sympathy to the delegation and people of Bangladesh following the recent flood disaster in that country.

As a small developing State consisting of many small, widely-spread islands in the middle of the South Pacific, Tonga depended in great measure on the living resources of the sea. However, its small fishing industry was very much in its infancy, and could not supply the demands of the ever-increasing population.

With the development of modern technology, the prospect of exploring and exploiting the resources of the ocean floor within the proposed economic zone held out great hope for his country. With no mineral resources in the islands, Tonga hoped that the economic zone would furnish both the food supply and the necessary finance to develop the country.

In the light of the foregoing, his country supported the principle of the 200-mile exclusive economic zone within which the coastal State would have sovereign rights over both the mineral and living resources. However, such rights should be limited to the resources of that zone. Freedom of navigation and overflight and the freedom to lay submarine cables and pipelines within the zone must be respected. The coastal State should also have the right to adopt pollution control measures and to control scientific research within the zone.

At the same time, the special needs of the land-locked and other geographically disadvantaged States should be accommodated. That could be done on a regional or subregional basis; one such suggestion had been made by the representative of Trinidad and Tobago. His delegation held that, subject to the rights given in a particular region to a land-locked or other geographically disadvantaged State with regard to the resources of the economic zone, the coastal State should issue licences to other States to explore and exploit the resources of the zone under bilateral agreements that were mutually beneficial - for example, a certain percentage of the catch to be sold to the coastal State.

With regard to the question of delimitation, his country's position in the middle of the ocean raised no problem. He was certain that delimitation could be carried out peacefully with neighbouring countries, either by agreement or by application of the

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median line principle. However, his country had noticed with much concern proposals to the effect that islands should have a somewhat restricted ocean space and economic zone. One such proposal was set forth in document A/9021, vol. IV, page 117. His delegation was aware that delimitation problems in other parts of the world may have prompted such proposals. If, however, they were to have a wider application, his delegation wished to register its strongest objection. Any such arbitrary criteria which discriminated against islands with respect to ocean space were unacceptable; such a procedure would be tantamount to penalizing a State that not only was isolated by the sea, thereby geographically disadvantaged, but also had limited land and resources for the needs of its people.

In the light of its growing concern, his delegation had joined in sponsoring document A/CONF.62/C.2/L.30, which was designed to give islands the same territorial sea and economic zone as those to be given to other land territories. The 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone recognized the need for islands to have a territorial sea; their equal need for an exclusive economic zone should not be forgotten. With reference to part B of document A/CONF.62/C.2/L.30 it was his delegation's view that people of territories which had not attained complete independence but which were in all other respects self-governing should have the rights to the resources of an exclusive economic zone, provided that the benefits were used solely for the people of such territories.

His delegation submitted that islands should have the right to the same ocean space, including the exclusive economic zone, as had other land territories, and it hoped that its view would be reflected in the working paper to be prepared by the officers of the Committee.

Mr. STEVENSON (United States of America) said that his delegation, which was willing to support a 200-mile economic zone as part of an over-all acceptable convention, wished to make some preliminary comments on document A/CONF.62/L.4 which dealt with the economic zone.

That zone was a new concept designed to reconcile the primary interests of the coastal State in resources with the primary interests of all States in navigation and other uses. Achieving a balance of that kind was a delicate task that could be accomplished only by a new concept designed to reconcile the primary interests of the coastal State in resources with the primary interests of all States in navigation and other uses. Achieving a balance of that kind was a delicate task that could be accomplished only by a new concept designed to reconcile the primary interests of the coastal State in resources with the primary interests of all States in navigation and other uses.

(Mr. Stevenson, United States)

While his delegation would welcome comments on its proposals for the economic zone it could not negotiate in the face of conceptual arguments that any particular idea was incompatible with the "essential character" of the zone. One of the most serious restraints in the history of the law of the sea on the expansion of coastal State jurisdiction over resources had been the concern that that jurisdiction would, with time, become territorial in character. Although the proponents of the economic zone had argued that it could be constructed with sufficient safeguards to prevent such a result, document A/CONF.62/L.4 tended to confirm some of his delegation's serious misgivings. The sponsors had omitted the specific articles that would have made the proposal acceptable. Accordingly, his delegation was unable to express even tentative acceptance of the document as a basis for negotiation, if such acceptance would expose it to a process of fruitless deductive reasoning on the basis of article 12 - or, worse still, a future argument that a consensus on such texts was evidence of new general international law.

Having said that, however, he wished to reiterate with respect to article 12 (a) that his delegation contemplated full coastal State regulatory jurisdiction over exploration and exploitation of sea-bed resources and fishing within the economic zone, with special treatment for anadromous and highly migratory species.

The question of fisheries jurisdiction - a central aspect of the economic zone - illustrated the difficulties inherent in a deductive approach. His delegation supported the inclusion of duties on the part of the coastal State to ensure, by means of appropriate laws and regulations, the conservation and full utilization of fish stocks. It believed that its proposals would stimulate investment in the fisheries of the coastal State, and that additional provisions could be discussed to that end. Moreover, it agreed with the observer for FAO in supporting international co-operation in fisheries management, and would encourage States to enter into appropriate treaty and organizational arrangements; however, it was not urging a mandatory transfer of coastal State fisheries management jurisdiction to multilateral commissions. Those points should be negotiated on their merits, with a view to reaching agreement on the establishment and exercise of coastal State fisheries jurisdiction in the zone.

Recognizing that coastal State interests with regard to resources could be seriously affected by certain other activities, his delegation had also proposed an exclusive coastal State right to authorize and regulate all installations for economic purposes, whether or not related to the exploration and exploitation of resources.

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His delegation supported the inclusion of environmental rights and duties with respect to installations and sea-bed resource activities. It also supported some revenue sharing from mineral resources, provisions on the integrity of investments in the development of such resources, and compulsory dispute settlement procedures to prevent abuse of treaty rights.

He hoped that the sponsors of document A/CONF.62/L.4, in referring to further specific articles, would agree that specific negotiation should be the main task ahead.

Articles 14, 15 and 17 did not make it sufficiently clear that all freedoms of the high seas recognized by the general principles of international law were preserved, except as otherwise provided. Nor was it sufficiently clear that the enjoyment of those freedoms was on an equal footing with the enjoyment by the coastal State of its rights in the zone. His delegation understood, however, that that was the intention of the articles and trusted that only a drafting problem was involved.

His remarks also applied to other proposals, including that submitted by Nigeria in document A/CONF.62/C.2/L.21, the comprehensive structure of which should, despite serious substantive problems on some points, commend itself to the entire Committee. His delegation was also encouraged by the remarks of the representative of Nigeria on matters that remained to be dealt with, and looked forward to the detailed elaboration of those ideas.

Mr. BIZIMANA (Burundi) expressed his condolences to the delegation of Bangladesh whose country had been the victim of a major natural disaster.

Together with other developing land-locked countries, Burundi attached great importance to the right of free access to and from the sea. That right had already been recognized by the Organization of African Unity and he appealed to the international community to do likewise.

His delegation recognized and supported the right of a coastal State to establish an exclusive economic zone of 200 nautical miles measured from the baselines used for measuring the territorial sea. The coastal State should exercise permanent sovereignty over all living and mineral resources in that zone, without interfering with the other legitimate uses of the seas. It should also recognize the right of land-locked and geographically disadvantaged countries to exploit the living resources of that zone on an equal footing. He endorsed the view expressed by the representative of Zaire that the establishment of an economic zone should not be detrimental to the land-locked

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countries. Burundi would reject the establishment of any zone which did not guarantee the rights and interests of those countries.

His delegation did not agree that coastal States should allow all States to fish in their exclusive economic zones since that would mean that developing countries would have to compete with the advanced fishing nations. However, all countries, without discrimination, should have the right to conduct scientific research for peaceful purposes in the marine environment by agreement with the coastal State, which should not withhold such agreement unjustifiably.

His delegation rejected the concept of a continental shelf as distinct from the economic zone and emphasized the importance of the principle of universality for the success of the Conference.

Mr. GEORGE (India) expressed his delegation's sympathy to the delegation of Bangladesh in its country's hour of trial. India would render all possible assistance to the people of Bangladesh and he felt sure that the international community as a whole would provide moral and material support.

The views of his delegation on the question of the exclusive economic zone were embodied in the proposals in documents A/CONF.62/L.4 and A/AC.138/SC.II/L.38 of which India was a sponsor, and in the statement by the Chairman of the Indian delegation in the plenary Conference. The concept of an exclusive economic zone had received more support than any other issue or item before the Conference. The quantum of support could even be termed a "consensus" or "near consensus". While such support was qualified or conditional in certain cases, there was a very wide measure of agreement in respect of the following elements: that the economic zone was a zone of exclusive national jurisdiction and control in respect of its living and non-living resources; that the coastal State should enjoy exclusive rights and jurisdiction in the preservation of the marine environment of the zone and the prevention and control of marine pollution; that it should have the exclusive right to conduct marine scientific research in that zone and to regulate the conduct of such research by foreign vessels; that, with regard to living resources, reasonable provision should be made for the special interests of the land-locked and other geographically disadvantaged States. Documents A/AC.138/SC.II/L.38 and L.40 of the Sea-Bed Committee and document A/CONF.62/L.4 contained relevant provisions and concrete proposals.

With regard to fisheries, the technologically advanced nations and the international organizations should participate in a planned programme of assistance to

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developing coastal States in order to enhance the capability of the latter to explore, exploit and manage the living resources in zones under their exclusive jurisdiction. India had adopted an integrated approach to fishery development and had already initiated a new programme to increase its fishing fleets and provide an adequate infrastructure for the development of its fishing industry.

His delegation took the view that the living resources in marine areas under the exclusive jurisdiction of more than one coastal State should be managed by consultation among all the States concerned; that the living resources of the high seas outside the exclusive jurisdiction of coastal States should be explored and exploited under regional and/or international arrangements, taking into account the special interests of countries bordering the area, and with adequate safeguards for optimum utilization and conservation of fish stocks; that joint ventures and similar types of resources utilization programmes should be encouraged in order to link the surplus capacity of developed nations with the technological requirements of developing States.

Mr. JAENICKE (Federal Republic of Germany) expressed his condolences to the delegation of Bangladesh whose country had been the victim of a major natural disaster.

His delegation was prepared to discuss the concept of an economic zone provided it was not merely a camouflaged extension of the territorial sea, but took into account the equal rights of all States and protected the interests of the international community.

The crucial issue in the economic zone concept was the proposed jurisdiction of the coastal State over the living resources in those waters. As the living resources of the oceans were largely concentrated within the 200-mile zone along the coast, an exclusive economic zone would mean that those resources would be monopolized by a limited number of coastal, mostly developed, States. His delegation could not agree that such a régime was more equitable than the present régime of the high seas, which at least offered all States equal opportunities to share in the common resources of the ocean.

There was an urgent need for proper management and conservation of fisheries resources and that could best be achieved through the establishment of effective international machinery. While fully appreciating the apprehension of some coastal States, and in particular those States which did not possess technically developed fishing industries, that the fisheries resources off their coasts might be over-exploited, it was the view of his delegation that a modern and equitable régime of

(Mr. Jaenicke, Federal Republic of Germany)

fisheries should clearly distinguish between two entirely separate aspects of the matter: the need for effective conservation and the equitable allocation of available resources. In the zone adjacent to its coast, the coastal State should have the necessary powers to implement and enforce agreed conservation measures, and to exercise residual powers in that respect without discrimination in form or in fact against foreign fishing vessels. Appeal against such powers to an independent expert or arbitral commission should be permissible. However, the recognized need for the conservation of fish stocks was no justification for the reallocation of available resources for the benefit of a limited number of geographically advantaged States. His delegation recognized that coastal States, in particular developing States, should have preferential rights regarding the exploitation of the resources off their coasts but such rights must be reconciled with the rights of other States, in particular of those which had habitually fished in those fishing grounds. In that connexion, he referred to the judgement of the International Court of Justice in the Fisheries Jurisdiction case delivered on 25 July 1974. His delegation intended to submit proposals on the issue under consideration at the appropriate time.

Mr. RABAZA (Cuba) expressed his condolences to the delegation of Bangladesh whose country had been stricken by a major natural disaster.

A large number of delegations had expressed their support for, or acceptance of, an extension of the ocean space over which coastal States exercised sovereignty and jurisdiction, or sovereign rights over the living and mineral resources in the waters, sea-bed and subsoil. His delegation hoped that efforts would be made to reconcile the different concepts of the economic zone with a view to the adoption by the Conference of an appropriate régime. One concept was based on the coastal State's sovereignty and jurisdiction over the zone in question, while the other advocated sovereignty over the resources in that zone. The former extended many of the competences of the coastal State in an area which at present was part of the high seas while the latter contained conditions which limited its competences outside the 12-mile limit. His delegation felt that the two concepts could be reconciled by solving the question of residual competences. Such a solution could be achieved by establishing new zones in which the coastal State would exercise sovereignty and jurisdiction in matters relating to certain enumerated competences. However, such an enumeration should not be considered exhaustive and, where necessary, the coastal State should have the competence to establish regulations concerning matters which were not covered by regional or

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international conventions, on the lines of the proposals contained in the Santiago Declaration of 1952, the Santo Domingo Declaration of 1972 and the Declaration of the Organization of African Unit/ (A/CONF.62/33).

Land-locked countries, should have a clearly established right to exploit the living resources of the sea. He endorsed the statement by the delegation of Trinidad and Tobago and the proposal submitted by the delegation of Jamaica to the Sea-Bed Committee (A/AC.138/SC.II/L.55) concerning the participation of States bordering on semi-enclosed seas in the exploitation of the resources in zones under the national jurisdiction of neighbouring States in the region.

It was important to ensure that the benefits deriving from the establishment of extended zones of national jurisdiction or from the right to participate in the exploitation of the extended zones of other States should be reserved exclusively for nationals of those countries on the lines of the provisions in articles 3 and 4 of the Jamaican proposal.

Freedom of navigation and overflight should be guaranteed in the zones to be established.

His delegation favoured the establishment of new fisheries commissions and the strengthening of existing commissions in order to achieve maximum rational exploitation of fisheries resources. It also believed that international organizations dealing with fisheries should play an important role in fisheries control.

Mr. PANUPONG (Thailand) said that Thailand was sympathetic to the idea of broad national jurisdiction without interference with other non-resource uses of the sea. His delegation's acceptance of the 200-nautical mile criterion was conditional upon a satisfactory solution of the question of what was included in coastal States' national jurisdiction and on measures to ensure compensatory rights or benefits for the countries which did not have the potential to extend their jurisdiction to that limit. It could also accept the concept of the coastal State's exclusive jurisdiction over the sea-bed of the economic zone and its subsoil if the coastal State accepted the idea of sharing the living resources of that zone on an equitable basis with other interested States.

While his delegation understood the principles of the proposed economic zone, it believed that the concept and the terms used to express it required clarification. The draft articles contained in documents A/AC.138/SC.II/L.40 and A/CONF.62/L.4, while attempting to clarify the matter, had, in fact, subjected the freedom of navigation and overflight to the restrictions resulting from the exercise by the coastal State of its rights within the area. His delegation considered the words "restrictions resulting from the exercise by the coastal State of its rights" to be rather vague and, in that connexion, preferred the wording of article 2, paragraph 1, of document A/CONF.62/C.2/L.21, which recognized freedom of all States in the economic zone regarding navigation and overflight as well as laying of submarine cables and pipelines. Any restrictions should be strictly confined to those resulting from the exercise in good faith of the rights with regard to the exploration, exploitation and conservation of the resources of the sea; the exercise of those rights should not have the effect of obstructing or impeding sea or air international communication.

His delegation's acceptance of the 200-mile zone under the jurisdiction of the coastal State depended on the settlement of the problem of what constituted the elements subject to national jurisdiction. In that connexion, his delegation wished to point out that if the proposed jurisdictional rights were fully implemented, close to 36 per cent of the total area of the sea would come under national jurisdiction. Twenty-nine land-locked States would gain practically nothing from the economic zone and close to 80 coastal States would gain comparatively little. Only about 30 States which represented less than one third of the countries of the world would gain substantially.

In view of the close link between the coastal State's interests and the adjacent sea, taking into account geographical realities, and in view of the vital economic interest in and needs of the coastal State for the resources of its maritime area, it would be legitimate for the coastal State to have exclusive jurisdiction over the sea-bed of the economic zone and its subsoil, which could be regarded as part of its national wealth. His delegation specifically mentioned the sea-bed and its subsoil because of the non-renewable nature of the resources contained therein and because of the fact that they were located in a given area.

Turning to the coastal State's jurisdiction over the living resources in the economic zone, he noted that the problem of fishing rights, which was one of the most complicated, was of vital interest to many countries including his own. By compensatory rights, his delegation meant the rights of other riparian States to the living

(Mr. Panupong, Thailand)

resources of that zone. The interests of other countries could be justified on many grounds, including the fact that the living resources were renewable and, if under-exploited, would result in waste. Furthermore, many nations depended heavily on fishing as a source of food and economic development. The most desirable course, therefore, would be the establishment of a régime which would make efficient use of the available living resources while taking into account the interests of other nations, and which would avoid the economic dislocation likely to be caused by any new régimes.

His delegation believed that the rights of some categories of States to share the living resources of a coastal State should be equitably determined and, if need be, in different degrees. Those categories included neighbouring States, whether land-locked or coastal which had fished in the area, geographically disadvantaged States, States bordering on enclosed or semi-enclosed seas and States which could not extend their jurisdictional area to the maximum distance. Those rights should be guaranteed by the provisions of the Convention, even though their exercise would require regional or subregional agreements.

His delegation wondered whether the concept of a 200-mile economic zone would be applied to islands such as mid-ocean islands, regardless of size. Furthermore, while some delegations had stated that the concept would not apply to territories under foreign domination, his delegation wondered what generally applicable criterion would distinguish between islands with dependency status and those forming part of a given territory. His delegation looked forward to receiving clarifications on all those problems in order to determine its final positions.

Mr. ARIAS SCHREIBER (Peru) said that his delegation's position coincided with some of those expressed in document A/CONF.62/L.4. For example, the outer limit of the 200-mile zone should be the maximum distance, though not the only one, for the exercise of the coastal State's rights in the sea adjacent to its coasts and in its soil and subsoil, without prejudice to the régime applicable to those continental shelves which exceeded that distance. Secondly, his delegation agreed with the proposal covering the basic rights of the coastal State within that zone of national jurisdiction with respect to the exploration and exploitation of the resources, the preservation of the marine environment, scientific research and the establishment and use of installations.

The main difference between his delegation's position and that contained in document A/CONF.62/L.4 related to the nature of the most appropriate institutions for protecting the interests referred to and for reconciling them with those of other States.

(Mr. Arias Schreiber, Peru)

His delegation believed that that could be done within a single area of sovereignty and jurisdiction which could include a duality of régimes with respect to international communications.

Referring to the draft articles contained in document A/CONF.62/L.4, his delegation believed that it had been very important to establish, in article 12, that the coastal State exercised, throughout all parts of the economic zone, sovereign rights for the purpose of exploration and exploitation of renewable and non-renewable natural resources of the sea-bed, its subsoil and superjacent waters. Those jurisdictional rights, as defined by the African countries in the various documents which they had submitted, should also be mentioned in connexion with the preservation of the marine environment, the carrying out of scientific research and other related interests. The formula used in defining the régime for navigation and overflight of the economic zone had two defects. Firstly, the drafting was very vague and omitted one essential element, namely that vessels should assume the obligation to observe peaceful coexistence and good neighbourliness by abstaining from military activities, including the launching or receipt of weapons and explosives, acts of propaganda, espionage or interference with communications. Secondly, if in addition to those obligations, vessels and aircraft should respect the rights of the coastal State in matters of exploration and exploitation of resources, preservation of the marine environment, scientific research, navigation and shipping, then the régime within the economic zone could not be defined as that of freedom of navigation and overflight of the international sea, where none of those restrictions were pertinent. It was therefore necessary to distinguish between three different régimes for navigation and overflight of the ocean space: that of innocent passage from the coast to a certain distance; that of free transit from that distance to a maximum limit of 200 miles; that of freedom of navigation and overflight beyond that maximum limit, that is, in the international zone.

His delegation also believed that the wording of article 15 was inappropriate when it stated that the coastal State should exercise its rights and perform its duties in the economic zone without undue interference with other legitimate uses of the sea. What were those legitimate uses? Certainly the authors did not mean the exploration and exploitation of resources, scientific research or the establishment and use of installations since they had stated that such activities should be regulated by the coastal State. There were other forms of international communications involved,

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Including pipelines and cables and, accordingly, the article should be more precise in order to avoid future conflicts.

Article 13 was either unnecessary or not specific enough. Why was it necessary to state that exploration and exploitation activity should be carried out exclusively for peaceful purposes? No mention had been made of navigation, scientific research, installations and other uses. His delegation wondered whether the intention was to suggest that the coastal State could not use its own economic zone for purposes of defence or naval exercises. If the intention was to ensure that the activities of other States in the economic zone would be carried out exclusively for peaceful purposes, then it would be necessary to amend the wording. If that was not the intention, then the article was superfluous. The draft also mentioned, in parenthesis, the requirement for land-locked or geographically disadvantaged developing countries to have equitable rights of access under regional, subregional or bilateral agreements, to the living resources of the exclusive economic zones of neighbouring coastal States. His delegation shared that principle and would express its ideas on it at the appropriate time.

His delegation was surprised at the anachronistic idea that the economic zone should be considered as the high seas. Firstly, it should come as no surprise that the concept of the high seas would be replaced by that of the international sea and, secondly, the economic zone was not situated in the middle of the ocean where all States had equal rights, but rather adjacent to the coasts of coastal States, which exercised exclusive rights for the protection of the interests of their peoples. The supporters of the conservative school did not seem to understand that the zone was one of national jurisdiction and not of the high seas or international sea. He trusted that they would realize that the old establishment had, inevitably, ended and that the developing countries were no longer passive spectators of the exploitation of their seas by other States but had become masters of their destinies.

Serious thought should now be given to what the representative of Lebanon had stated, namely, that the coastal State should assume, in the economic zone, responsibilities similar, if not greater, to those which they exercised in the territorial sea in order to ensure the rule of law in the complex activities which would be carried out in that zone. His delegation believed that the various drafts on the economic zone had, up to the present, been equivocal in setting out the rights and functions of the

(Mr. Arias Schreiber, Peru)

coastal State and the regulations for exploration and exploitation of the resources, the preservation of the marine environment and the control of scientific research. It agreed, however, that other drafts had also mentioned the right of the coastal State in authorizing and regulating the construction and use of artificial islands and other installations in the sea, its soil and subsoil. However, they all suffered from the same defect since any enumeration could prove insufficient to cover the responsibilities of the coastal State in the light of the new uses and abuses of the sea which would result in the future. Prudence and realism required the adoption of another method: what should be stipulated were not the rights and functions of the coastal State within its zone of exclusive jurisdiction, but rather the rights and uses granted to other States. Those rights and uses could be the following: the right of free transit for vessels and aircraft of all States with the precise limitations to which he had referred in commenting on document A/CONF.62/L.4, article 14; the use of other means of international communication, including the laying of cables and pipelines, subject to the provisions established by the Convention; the uses by, and preferential treatment of land-locked and other geographically disadvantaged States of the region in the economic zone. That did not exclude the possibility of third States having access to the exploration and exploitation of the resources of the economic zone and to scientific research. On the contrary, the Convention could include such provisions on the understanding that those activities would be carried out with the agreement and under the control of the coastal State.

His delegation believed that that would be the most appropriate approach in order to take into account not only the rights of the coastal State, but also those of other States within the economic zone. If, however, the Conference chose the procedure currently being followed, his delegation believed that in addition to the rights and functions of the coastal State with respect to resources, the preservation of the marine environment, scientific research and the establishment of installations, due consideration should be given to "the protection of other related interests". That addition was absolutely indispensable in order to safeguard what had been defined as "residual rights" of the coastal State. That important safeguard should not be omitted from a convention destined to be in effect for a long time.

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Mr. MIRCEA (Romania) said that his delegation, from the outset, had been in favour of the new concept of the economic zone or patrimonial sea beyond the territorial sea since that was, above all, an expression of the will and the decision of the developing countries to ensure a utilization of the resources of their maritime adjacent zones more in keeping with their national interests. That aspect of the progressive development of the law of the sea derived from the more general principle of the full exercise of permanent sovereignty by a State over its natural resources. His delegation therefore believed that the sovereign rights of the coastal States in their economic zones must be real. At the same time, it believed that once that fact had been recognized, agreement on the most adequate means of utilizing the potential living resources of the economic zones should not be impeded. The fact that the authors of proposals on the economic zone had left open several aspects of the question of the preservation and exploitation of the living resources was encouraging in that there was the possibility of access to those zones by other States under reasonable conditions. In that connexion, it seemed appropriate to contemplate certain priorities for the land-locked countries, developing countries in general and States which had made efforts to acquire fishing vessels even though they did not have abundant living resources in the zone adjacent to their coasts.

Furthermore, his delegation believed that the idea of maintaining existing international bodies for certain regions and establishing similar bodies in other regions merited attention and would be a good experience in the field of international co-operation. The system could be even further improved taking into account the new legal régime for the zone and the priorities he had cited. Furthermore, approaching the question of the economic zone and its living resources in the context of under-development, his delegation believed that access to the economic zones of developed countries could take place under more favourable conditions than those which should be observed with respect to the economic zones of developing countries.

Referring to the question of the delimitation of waters between neighbouring States, he said that the proposals submitted by his delegation during the debate on the continental shelf were also valid for the economic zone.

His delegation's proposals for the delimitation of marine or ocean space (A/CONF.62/C.2/L.18) were submitted not only because of the intrinsic unity of the entire ocean space but also for reasons of principle since all baselines formed part of the coasts. The idea was also of great practical importance in that it would

(Mr. Mircea, Romania)

correct or avoid the unfavourable effects of certain natural extensions beyond the coasts or applicable baselines.

His delegation's proposals on islands and islets also referred to the delimitation between neighbouring States. That did not mean, however, that it did not agree with the proposals in the OAU Declarations and other documents of the Conference which stated that islands and islets came under a different régime. Island States had nothing to fear because all the proposals concerning the régime for islands took their particular interests into account. His delegation agreed entirely with the representative of Madagascar regarding islets and uninhabited islands and it believed that its proposals concerning that category of land extensions would be better dealt with in the context of the economic zone, which could be extended to 200 miles.

The meeting rose at 6 p.m.